

# Kramer Levin

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May 14, 2021

VIA ECF

Hon. Margo K. Brodie  
United States District Court for the Eastern  
District of New York  
225 Cadman Plaza East  
Chambers N 626  
Brooklyn, NY 11201

Re: *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig.*,  
No. 05 MD 1720 (MKB)(VMS)

Dear Judge Brodie:

We respectfully submit this letter on behalf of Proposed Intervenor Walmart Inc. to join in the arguments set forth in the sur-replies filed today by the Direct Action Plaintiffs (“DAPs”) and Merchant Trade Groups (“Trade Groups”). Those submissions were made in response to Defendants’ “reply” memorandum in support of the Equitable Relief Plaintiffs’ (“ERPs”) motion for class certification. Walmart has moved to intervene in order to object to certification of the class proposed by the ERPs and has already stated that if the proposed class is certified it would opt out of the class if permitted to do so. Doc. 8471 at 2. The submissions made by the DAPs and Trade Groups provide further support for Walmart’s position that, if the proposed class is certified, the Court has the authority to permit Walmart to opt out. *See* Doc. 8476 at 12-15; Doc. 8479 at 10-12; *accord* Doc. 8465 at 20-22. Moreover, the concerted efforts of the ERPs and Defendants to conscript Walmart into a no-opt-out class over its objections provides a significant indication that the ERPs do not adequately represent Walmart’s interests in this litigation.<sup>1</sup>

Respectfully submitted,

/s/ Paul H. Schoeman

Paul H. Schoeman  
*Counsel for Proposed Intervenor Walmart Inc.*

Cc: Hon. Vera M. Scanlon (via ECF)  
All Counsel of Record (via ECF)

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<sup>1</sup> The ERPs have purported to reserve a right to respond to Walmart’s objection to class certification until the Court rules on Walmart’s intervention motion. The ERPs have also declined, pending a ruling on the intervention motion, to permit Walmart access to confidential and highly confidential information relevant to the question of certification.